

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

CITY OF PIKEVILLE, KENTUCKY

PLAINTIFF

v.

MOUNTAIN WATER DISTRICT

DEFENDANT

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) CASE NO. 95-296
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O R D E R

This matter arises upon the city of Pikeville's petition for rehearing filed August 30, 1996. Pikeville requests the Commission grant rehearing and reconsider its final Order in this case dated August 8, 1996, raising two arguments for our review. Mountain Water District ("Mountain") filed its response in opposition to the petition for rehearing on September 10, 1996.

In support of its petition, Pikeville asserts the Commission erred in denying the city's requested relief based upon findings that the adjustment of the original contract rate in 1991 was unwarranted under the parties' agreements. Pikeville argues that it is undisputed that its cost of production had risen significantly between 1986 and 1991 and that the increase was the result of hiring the Professional Services Group to operate and maintain the city's system. Pikeville argues that the Commission's finding that the

parties did not agree that an increase was necessary is unsupported by the record since Mountain's conduct clearly indicated knowledge that an increase was necessary. In fact, Pikeville asserts that Mountain never contested the appropriateness of the increase and merely objected to the manner in which the cost-of-service study was calculated.

The Commission disagrees. The record in this case is replete with correspondence related to this dispute that supports a finding that Mountain was not in agreement that the cost of production had risen sufficiently to justify an increase. Mountain advised the city on March 15, 1991 in a letter to the City Manager from the Executive Director of Mountain that "[t]he District has no objection to a bona fide rate increase. The methodology used in the Umbaugh report appears to be proper and acceptable; however, we feel that certain details of this study should be reviewed in depth with input from both sides. Attachment "A" hereto is a partial list of items we feel warrant further consideration." Attachment A to the letter includes concerns related to Pikeville's revenue requirements and Mountain's desire to verify the data.

In a letter dated May 10, 1991 to the Executive Director of Mountain, the City Attorney acknowledged Mountain's request to review the city's records concerning expenses and debt service and stated "[e]xpense figures have now been audited and you may review our independent audit report concerning those figures." On May 30, 1996, the City Attorney further advised Mountain that the city had "elected" to adjust the rate and an Ordinance placing the rate in effect on July 1, 1991 had been adopted. In fact, it was not until December 21, 1992 in a letter from the City Attorney to David Frederick that the city instructed H. J. Umbaugh and Associates, Inc. to provide the

District or its attorney "with any documents or materials that were furnished by the city of Pikeville . . . as part of the process in which your company calculated the latest rate increase." Nothing in this record and no additional evidence offered by Pikeville supports its contention that Mountain agreed at any point in time that the rate increase was necessary and rehearing should be denied on that issue.


The second issue presented by the city in support of its requested rehearing is that the Commission unreasonably rejected any adjustment of the contractual rate paid by Mountain to Pikeville. No additional evidence is offered by Pikeville in support of this argument. The Commission framed the issues for Pikeville in an Order entered December 15, 1995 stating that if the rate in question was adjusted consistent with the parties' contractual agreement, the contract would be enforced. Having found that the record will not support a finding that both parties were satisfied that costs of production had risen sufficiently to warrant an increase, it is neither arbitrary nor unreasonable to deny enforcement of the contract. Rehearing should be denied on this issue.

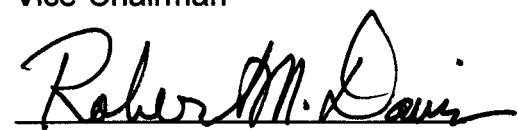
IT IS THEREFORE ORDERED that Pikeville's request for rehearing is hereby denied.

Done at Frankfort, Kentucky, this 19th day of September, 1996.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director